

Meeting Notes

RULES ADVISORY COMMITTEE

Relating to Passage of HB 2546 Regulation of Tobacco Sales: ORS § 431.840 to 431.853

Revisions to OAR 415-060-0010 to -0050: Standards for Reducing Tobacco and Inhalant Delivery System Sales to Minors

August 26, 2015 1:00 pm – 2:30 pm
Portland State Office Building (PSOB), Room 1E

Attendees: Jen Baker (Oregon Nurses Association), Karen Girard (Oregon Health Authority), Sandy Giffin (Oregon Poison Control Center), Heather Gramp (Oregon Health Authority), Bruce Gutelius (Oregon Health Authority), Sara Hartstein (Benton County Public Health), Kim La Croix (Oregon Health Authority), Lindsey Hopper (PacificSource Government Programs), Shawn Miller (NW Grocery Association/Miller & Associates), Matt Minahan (NW Vapor Association), Carrie Nyssen (American Lung Association of the Mt. Pacific), Susan Miles (Oregon Health Authority), Shannon O'Fallon (Department of Justice), Tanya Phillips (Jackson County Public Health), Penny Pritchard (Deschutes County Public Health), Luis Rodriguez (American Cancer Society Action Network), Sandra Rood (Oregon Pediatric Society), Letitia Mack (Oregon Health Authority), Jesse Sweet (Oregon Liquor Control Commission – Retail Marijuana Program), Michael Tynan (Oregon Health Authority), Becky Wright (Multnomah County Public Health).

Welcome and Overview of Rulemaking Process

- The meeting was convened by Heather Gramp at 1:00 p.m. with a welcome, information about call-in, meeting recording and logistics.
- The purpose of the Rules Advisory Committee (RAC) meeting was shared, specifically, to address rulemaking for the passage of HB 2546.
 - This RAC will address the provisions of HB 2546 related to child-resistant packaging, packing not attractive to minors, and labeling requirements. A second RAC will address inhalant delivery systems in the Indoor Clean Air Act (ICAA).
- The role of the RAC was described.
 - Committee members were selected to provide expertise and advice in rule making. OHA staff in attendance also have content expertise.
 - Observers are welcome to attend, but may not participate in the discussion. The RAC is not tasked with reaching consensus; individual advice is taken, and OHA will write rules that best reflect the statute.
 - At least one more meeting of this committee is scheduled for September 11. The schedule can be changed to add more meetings as necessary. All will be notified.
 - Final rules will be in effect July 1, 2016.

Review Agenda and Meeting Plan

- Kim La Croix recapped the previous RAC meeting held on August 6. Notes were sent to committee members and are available [online](https://public.health.oregon.gov/PreventionWellness/TobaccoPrevention/SmokefreeWorkplaceLaw/Pages/complaints.aspx):
<https://public.health.oregon.gov/PreventionWellness/TobaccoPrevention/SmokefreeWorkplaceLaw/Pages/complaints.aspx>.
- Kim La Croix reviewed the agenda for the current meeting, indicating that today's RAC meeting will cover child-resistant packaging and packaging not attractive to minors.

Discuss Areas for Rule Development

Child Resistant Packaging

- Heather Gramp shared slides that reviewed the part of HB 2546 that requires child-resistant packaging for Inhalant Delivery Systems (IDS), and reviewed how IDS is defined in statute. IDS includes:
 - Pre-filled disposables, where the e-liquid is sealed and contained in the device.
 - E-liquids, which are sold in bottle with cap or dropper, sometimes bottle in box.
 - Device/Hardware, typically sold without liquid and sometimes sold in box.
- Heather went over examples of inner and outer packaging. The federal Poison Prevention Packaging Act testing protocol instructs testers to remove outer packaging and test the inner. The PPPA standards are applicable to substances commonly found around the home. An example was shared of a recent recall of a product with a dropper that was not child-resistant once the dropper was added to the bottle.

Committee Questions/Comments:

- A handout was shared by Oregon Poison Control Center (OPCC). Data show that more children were exposed to nicotine from the device versus the liquid but OPCC can't distinguish what type of device callers refer to (prefilled vs. refillable devices). OPCC will begin identifying if exposure involves nicotine with added flavor. Children exposed to .8 mg/kg is dangerous and 1.4-1.9 mg/kg can lead to death.
- There was discussion about whether rules will include the IDS devices that are sold without e-liquid inside. The risk is that once the device is removed from the outer package and filled with e-liquid, it is readily available to children.
- Heather Gramp reviewed the issue of legislative intent. OHA reviewed the legislative hearings relating to HB 2546. The only specific comment made by a legislator regarding intent was direction to exempt the pre-filled disposable devices.

Committee Questions/Comments:

- Shannon O'Fallon noted it is important to listen to or read the words used by legislators. However, the IDS definition in the statute states it's a device to be used for inhaling, regardless of whether it is empty or not.

- The committee continued the discussion; although legislative intent to cover IDS is clear, we need to define the “package” and whether that applies to the device itself.
- Federal standards clearly define the need for child-resistant packaging for dangerous products.
- Shawn Miller provided an example of when household cleaner is transferred from the bottle it is stored in (child-resistant) into something else used for cleaning (e.g. a spray bottle – not child-resistant). The committee discussed an adult transferring a dangerous liquid from a child resistant package to another container and whether this is similar to IDS devices or not.

Packaging not Attractive to Minors

- Heather Gramp shared slides reviewing that part of HB 2546 that requires OHA to write rules requiring packaging not be attractive to minors for IDS.
- One way to think about the “not attractive to minors” is to focus at the point of sale; the child-resistant packaging is more applicable for in the home.
- Regarding intent, none of the hearings in the legislature specifically addressed the “not attractive to minors” section.
- Currently a wide variety of packaging available on the market. OHA is reviewing evidence relating to tobacco marketing that is and is not attractive to minors.
- Heather showed slides with images of cartoons and characters. The RAC was asked if these examples seemed reasonable to prohibit and there was general agreement.

Committee Questions/Comments:

- Penny Pritchard suggested thinking about what is attractive to a broad spectrum of minors since some things are more attractive to a 5-year-old rather than a 16-year-old and vice versa.
 - There was discussion about flavors. Local experience and data on tobacco products show that dessert flavors and shiny packaging are attractive to youth.
 - Matt Minahan stated that adults use flavored e-cigs and vaping to quit smoking and don’t like the taste of smoke.
 - Sandy Giffin shared that the Oregon Poison Control Center recommends limiting flavor advertising to be text-only, and not allow any images of food. There was a reminder to the RAC that there was no legislative intent nor statute language limiting the actual sales of flavors.
 - There was additional general discussion about youth initiation starting with products with no nicotine and progressing to combustible tobacco products.
 - Rules would be difficult to address subjective parameters such as colors that are attractive to minors. Plain packaging could be useful.
- The World Health Organization defines plain packaging as devoid of distinctive fonts, descriptive words and phrases, images and logos.

Committee Questions/Comments:

- There was further discussion about plain packaging. Comments included: Black and white and just words are generally unattractive to a minor. Adults only need to see words to choose a flavor. Plain packaging laws are in effect in Australia, and not in the U.S.
 - There was a discussion that youth identify with brands. Black and white labeling can list the brand, without showing a logo.
 - DOJ will advise on constitutionality for questions related to speech, such as font types.
- The committee saw a slide showing how manner of dispensing (e.g., Pez) can be attractive.

Committee Questions/Comments:

- The RAC agreed that the manner in which products are dispensed or the shape of a package can be appealing. Karen Girard shared an example of an IDS in the shape of an iPhone case.
- The alcohol regulatory framework related to packaging is not very precise. Examples of prohibited alcohol packaging included food products incorporating alcohol, and a promotion which included a children's toy.

Next Meeting Agenda:

At the next meeting, the RAC will consider labeling, which will address descriptors that are prohibited, as well as items that must be included, such as ingredients.

The meeting will also revisit the discussion on packaging not attractive to minors.

Future meetings will include a review of draft rules and other requirements before the public hearing process begins.

The next meeting is on September 11 and more meetings can be scheduled, as needed.

Process review and Final Questions

Heather thanked the committee members for their participation and encouraged them to continue participating in this process with OHA. Heather adjourned the meeting at 2:30 p.m.